

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. STATE OF OKLAHOMA, ex rel. )  
W.A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL OF )  
THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the TRUSTEE FOR )  
NATURAL RESOURCES FOR THE )  
STATE OF OKLAHOMA, )

Plaintiff, )

v. )

Case No. 4:05-cv-00329-JOE-SAJ

1. TYSON FOODS, INC., )  
2. TYSON POULTRY, INC., )  
3. TYSON CHICKEN, INC., )  
4. COBB-VANTRESS, INC., )  
5. AVIAGEN, INC., )  
6. CAL-MAINE FOODS, INC., )  
7. CAL-MAINE FARMS, INC., )  
8. CARGILL, INC., )  
9. CARGILL TURKEY )  
PRODUCTION, LLC, )  
10. GEORGE'S, INC., )  
11. GEORGE'S FARMS, INC., )  
12. PETERSON FARMS, INC., )  
13. SIMMONS FOODS, INC., and )  
14. WILLOW BROOK FOODS, INC., )

Defendants. )

**PLAINTIFF'S RESPONSE IN OPPOSITION  
TO "DEFENDANTS' OBJECTION TO PLAINTIFFS'  
DESIGNATION OF COMPLAINT AS 'RELATED CASE'"**

COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA ("the State"), by and through counsel, and respectfully submits

that Defendants' Objection to Plaintiffs' Designation of Complaint as "Related Case"

("Defendants' Objection") is not well-taken and should be overruled.<sup>1</sup>

## **I. Introduction**

The State stated on the face of its Complaint that this case is related to the case of *City of Tulsa v. Tyson Foods, Inc.*, 01-CV-0900-EA(C), as required by LCvR3.1 ("The face of the Complaint shall state whether the action is related to any previously filed case in this Court and identify by number said related case."). The Poultry Integrator Defendants now object to the State's "unilateral" designation of this case (the "*Oklahoma*" case) as being related to the *City of Tulsa* case. As the State demonstrates, the similarities and commonalities of the two cases support their designation as related, and therefore the Court should overrule the Defendants' Objection.

## **II. Purpose and Meaning of "Related Case"**

It is beyond debate that the purpose of a "related case" designation is to conserve judicial resources. The Oklahoma Local Civil Rules, however, do not define the term "related case." It is therefore instructive to review how other district courts have defined the term. A number of district courts' local rules provide for a "related case" designation in instances where the case involves similar questions of facts, similar questions of law, substantial identity of the parties, and / or would avoid duplication of labor. *See, e.g., D. Alaska L. Civ. R. 40.2(b)* ("An action or proceeding is related to another when both involve: (1) some of the same parties and are based on the same or similar claims; . . . or (3) substantially the same facts and questions of law"); *D. Ariz. L. Civ. R. 42.1(a)(1)* ("Whenever two or more cases are pending before different Judges

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<sup>1</sup> This Memorandum in Opposition is intended to respond not only to the Defendants' Objection, but also to all of the other Poultry Integrator Defendants which have joined and / or adopted the Defendants' Objection.

and any party believes that such cases . . . (D) call[] for determination of substantially the same questions of law; or (E) for any other reason would entail substantial duplication of labor if heard by different Judges, any party may file a motion to transfer the case or cases involved to a single Judge"); *C.D. Cal. L. Civ. R. 83-1.3.1* ("At the time a civil action . . . is filed . . . the attorney shall file and serve on all parties who have appeared a Notice of Related Case(s), stating whether any action previously filed or currently pending in the Central District and the action being filed appear: . . . (b) To call for determination of the same or substantially related or similar questions of law and fact; or (c) For other reasons would entail substantial duplication of labor if heard by different judges; . . ."); *E.D. Cal. L. Civ. R. 83-123(a)* ("An action is related to another action within the meaning of this Rule when . . . (3) both actions involve similar questions of fact and the same question of law and their assignment to the same Judge or Magistrate Judge is likely to effect a substantial savings of judicial effort, either because the same result should follow in both actions or otherwise; or (4) for any other reasons, it would entail substantial duplication of labor if the actions were heard by different Judges or Magistrate Judges"); *N.D. Cal. L. Civ. R. 3-12(a)* ("An action is related to another when: (1) The actions concern substantially the same parties, property, transaction or event; and (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges"); *S.D. Cal. L. Civ. R. 40.1(f)* ("An action or proceeding is related to another action or proceeding where both of them: . . . 3. Involve substantially the same facts and the same questions of law"); *D. Del. L. Civ. R. 3.1(b)* ("Counsel for a plaintiff in a civil action shall indicate on the civil cover sheet if such action and one or more other civil actions or proceedings previously decided or currently filed in this District or any other court: (1) arise from the same or substantially identical transactions, happenings, or events; (2) involve the same or substantially

the same parties or property; . . . or (4) for other reasons would entail substantial duplication of labor if heard by different judges"); *D.D.C.L. Civ. R. 40.5(a)(3)* ("Civil, including miscellaneous, cases are deemed related when the earliest is still pending on the merits in the District Court and they . . . (ii) involve common issues of fact, . . ."); *M.D. Fla. L. Civ. R. 1.04(b)* ("Whenever two or more cases are pending concurrently before different judges of the Court, . . . and the cases involve common questions of law or fact, or for other reasons their disposition entails duplication of judicial labor, the judges involved shall determine whether the most recently filed case or cases should be reassigned to the judge to whom the earliest filed case is assigned"); *N.D. Fla. L. Civ. R. 5.1(G)* ("Whenever the newly filed case involves issues of fact or law common with such issues in another case currently pending in this district . . . the party filing the case shall file a 'Notice of Pendency of Other or Prior Similar Actions' containing a list and description thereof."); *S.D. Fla. L. Civ. R. 3.9(C)* ("Whenever an action or proceeding is filed in the Court which involves subject matter which is a material part of the subject matter of another action or proceeding then pending before this Court, or for other reasons the disposition thereof would appear to entail the unnecessary duplication of judicial labor if heard by a different Judge, the Judges involved shall determine whether the newly filed action or proceeding shall be transferred to the Judge to whom the earlier filed action or proceeding is assigned"); *N.D. Ill. L. Civ. R. 40.4(a)* ("Two or more civil cases may be related if one or more of the following conditions are met: . . . (2) the cases involve some of the same issues of fact or law; . . ."); *D. Md. L. Civ. R. 103(1)(b)(i)* ("If counsel for a plaintiff in a civil action believes that the action being filed and one or more other civil actions or proceedings previously decided or pending in this Court (1) arise from the same or identical transactions, happenings or events; . . . or (4) for any other reason would entail substantial duplication of labor if heard by different judges, counsel

shall indicate that fact by designating the case as a 'related case' on the civil cover sheet"); *D. Mass. L. Civ. R. 40.1(G)(1)* ("For purposes of this rule, a civil case is related to one previously filed in this court if some or all of the parties are the same and if one or more of the following similarities exist also: the cases involve the same or similar claims or defenses; . . . or the cases involve substantially the same questions of fact and law. . ."); *D. Neb. L. Civ. R. 1.4(a)(4)(B)(iii)* ("Civil cases are related when they involve some or all of the same issues of fact or arise out of the same transaction . . . whether or not any of the cases are closed."); *D.N.H.L. Civ. R. 42.1(a)* ("Related cases are cases which: . . . (4) call for the resolution of substantially the same questions of law; or (5) would entail substantial duplication of labor if heard by different judges."); *E.D.N.Y.L. Civ. R. 50.3(a)* ("A case is 'related' to another for purposes of this guideline when, because of the similarity of facts and legal issues, . . . a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge"); *N.D. Ohio L. Civ. R. 16.3(c)(1)(C)* ("As used in this Rule, a case is 'related' to one or more other cases if: . . . (iii) they involve substantially the same facts"); *D.P.R.L. Civ. R. 3.2(d)* ("An action is deemed related to another if: . . . (3) both actions involve similar questions of fact and the same question of law and their assignment to the same district judge is likely to effectuate a substantial saving of judicial effort"); *W.D. Tenn. L. Civ. R. 83.3(a)(3)* ("For purposes of this subsection, a companion case includes, but is not limited to, a case arising from or related to the same transaction, condition, or occurrence as another pending case"); *E.D. Tex. L. Civ. R. 42(b)* ("When two or more actions are pending before a judge which involve either (1) a common question of law or fact; . . . that judge may order that all or part of the actions be consolidated").

### III. Argument

The State's designation of this action as being related to the case of *City of Tulsa v. Tyson Foods, Inc.*, 01-CV-0900-EA(C), was appropriate under LCvR3.1 and should not be stricken. Contrary to the Poultry Integrator Defendants' suggestion, the determination of "relatedness" does not focus on the characteristics that distinguish the two lawsuits. *See* Defendants' Objection, p. 3. In fact, the local rules cited above demonstrate just the opposite. The determination of "relatedness" focuses on the characteristics that two lawsuits share in common. This case and the *City of Tulsa* significantly overlap in the following ways:

- Both cases involve government entities suing poultry integrators for pollution to Oklahoma waters. (*Compare* Oklahoma Compl. ¶ 5 with Tulsa Compl. ¶ 3.)
- The Oklahoma suit names six of the seven defendants named in the Tulsa suit (Tyson Foods, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., Simmons Foods, Inc., Cargill, Inc., and George's, Inc.), and those six defendants are poultry integrators. (*Compare* Oklahoma Compl. ¶¶ 6-21 with Tulsa Compl. ¶¶ 4-9.)
- Both cases allege impairment of the beneficial and public use and enjoyment of Oklahoma waters. (*Compare* Oklahoma Compl. ¶¶ 25-27 with Tulsa Compl. ¶¶ 2, 29.)
- Both cases allege pollution of water bodies that are sources of drinking water. (*Compare* Oklahoma Compl. ¶ 28 with Tulsa Compl. ¶¶ 11-14.)
- Both cases are actions for pollution by poultry integrators of a watershed area. (*Compare* Oklahoma Compl. ¶¶ 22-23 with Tulsa Compl. ¶¶ 14-16.)
- Each case has as its gravamen the pollution activities by the poultry integrators in a watershed area. (*Compare* Oklahoma Compl. ¶¶ 51-55 with Tulsa Compl. ¶ 16.)
- Both cases allege that the same, specific, detailed activities of the poultry integrators are the cause of the pollution of the waters. (*Compare* Oklahoma Compl. ¶¶ 32-42 with Tulsa Compl. ¶ 18.)
- Both cases allege that the relationship between the poultry integrators and the growers is a relationship of employer/employee or principal/agent, and that the relationship of the growers to the poultry integrators is not that of an independent contractor. (*Compare* Oklahoma Compl. ¶¶ 43 with Tulsa Compl. ¶¶ 18.)

- Both cases focus on the specific manner in which the poultry integrators and growers dispose of poultry waste on land as the underlying cause of the pollution and damages complained of. (*Compare* Oklahoma Compl. ¶¶ 48-57 with Tulsa Compl. ¶¶ 19.)
- Both cases allege that overload levels of phosphorus and nitrogen from the poultry waste create part of the pollution and damages complained of. (*Compare* Oklahoma Compl. ¶¶ 58-61 with Tulsa Compl. ¶¶ 20.)
- Both cases assert a CERCLA cause of action. (*Compare* Oklahoma Compl. ¶¶ 70-77 with Tulsa Compl. ¶¶ 33-41.)
- Both cases assert a state law nuisance claim. (*Compare* Oklahoma Compl. ¶¶ 90-100 with Tulsa Compl. ¶¶ 47-52.)
- Both cases assert a state law claim for trespass. (*Compare* Oklahoma Compl. ¶¶ 111-119 with Tulsa Compl. ¶¶ 53-56.)
- Both cases assert a state law claim for unjust enrichment. (*Compare* Oklahoma Compl. ¶¶ 132-139 with Tulsa Compl. ¶¶ 68-71.)

Admittedly, the instant case and the *City of Tulsa* case are not completely identical. For example, the instant case involves broader injury and damages claims than those alleged in the *City of Tulsa* case. However, complete identity is not the test for "relatedness;" similarity is the relevant standard. Particularly as pertains to the Poultry Integrator Defendants' conduct and the theories of Poultry Integrator Defendants' legal liability, it is clear that the two cases involve similar questions of facts, similar questions of law, and a substantial identity of the defendant parties. It therefore follows that a "related case" designation would avoid duplication of labor and conserve judicial resources. Accordingly, a "related case" designation is appropriate.<sup>2</sup>

#### IV. Conclusion

WHEREFORE, premises considered, Defendants' Objection should be overruled.

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<sup>2</sup> The Poultry Integrator Defendants implicitly suggest that the fact that the *City of Tulsa* case has been closed should enter into the "relatedness" calculus. However, the plain language of LCvR3.1 does not distinguish between open and closed cases. LCvR3.1 ("The face of the Complaint shall state whether the action is related to any previously filed case in this Court . . .") (emphasis added).

Similarly, the Poultry Integrator Defendants' reliance on *Obert v. Republic Western Insurance Co.*, 190 F.Supp.2d 279 (D.R.I. 2002), is unavailing. The *Obert* Court found relatedness.



Respectfully submitted,

W.A. Drew Edmondson (OBA #2628)  
Attorney General  
Kelly H. Burch (OBA #17067)  
J. Trevor Hammons (OBA #20234)  
Assistant Attorneys General  
State of Oklahoma  
2300 North Lincoln Boulevard  
Suite 112  
Oklahoma City, OK 73105  
(405) 521-3921



M. David Riggs (OBA #2583)  
Joseph P. Lennart (OBA #5371)  
Richard T. Garren (OBA #3253)  
Douglas A. Wilson (OBA #13128)  
Sharon K. Weaver (OBA #19010)  
Riggs, Abney, Neal, Turpen, Orbison & Lewis  
502 West Sixth Street  
Tulsa, OK 74119  
(918) 587-3161

Robert A. Nance (OBA #6581)  
D. Sharon Gentry (OBA #15641)  
Riggs, Abney, Neal, Turpen, Orbison & Lewis  
Paragon Building, Suite 101  
5801 Broadway Extension  
Oklahoma City, OK 73118  
(405) 843-9909

J. Randall Miller (OBA #6214)  
Louis W. Bullock (OBA #1305)  
David P. Page (OBA #6852)  
Miller, Keffer & Bullock, PC  
222 South Kenosha Avenue  
Tulsa, OK 74120  
(918) 743-4460



Frederick C. Baker (admitted *pro hac vice*)  
Elizabeth C. Ward (admitted *pro hac vice*)  
Motley Rice LLC  
28 Bridgeside Boulevard  
P.O. Box 1792  
Mt. Pleasant, SC 29465  
(843) 216-9000

William H. Narwold (admitted *pro hac vice*)  
Motley Rice LLC  
One Corporate Center  
20 Church Street, 17th Floor  
Hartford, CT 06103  
860-882-1682

*Attorneys for the State of Oklahoma*

November 18, 2005

### **CERTIFICATE OF SERVICE**

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- **Frederick C Baker**  
fbaker@motleyrice.com mcarr@motleyrice.com;fhmorgan@motleyrice.com
- **Vicki Bronson**  
vbronson@cwlaw.com lphillips@cwlaw.com
- **Martin Allen Brown**  
mbrown@jpm-law.com brownmartinesq@yahoo.com
- **Louis Werner Bullock**  
LBULLOCK@MKBLAW.NET  
NHODGE@MKBLAW.NET;BDEJONG@MKBLAW.NET
- **W A Drew Edmondson**  
fc\_docket@oag.state.ok.us  
drew\_edmondson@oag.state.ok.us;suzy\_thrash@oag.state.ok.us.
- **John R Elrod**  
jelrod@cwlaw.com vmorgan@cwlaw.com
- **Bruce Wayne Freeman**  
bfreeman@cwlaw.com sperry@cwlaw.com
- **Richard T Garren**  
rgarren@riggsabney.com dellis@riggsabney.com
- **Dorothy Sharon Gentry**  
sgentry@riggsabney.com jzielinski@riggsabney.com
- **Robert W George**  
robert.george@kutakrock.com donna.sinclair@kutakrock.com
- **Thomas James Grever**  
tgrever@lathropgage.com
- **Jennifer Stockton Griffin**  
jgriffin@lathropgage.com dschatzer@lathropgage.com
- **John Trevor Hammons**  
thammons@oag.state.ok.us  
Trevor\_Hammons@oag.state.ok.us;Jean\_Burnett@oag.state.ok.us
- **Theresa Noble Hill**  
thill@rhodesokla.com mnave@rhodesokla.com
- **Philip D Hixon**  
Phixon@jpm-law.com
- **Mark D Hopson**  
mhopson@sidley.com dwetmore@sidley.com;joraker@sidley.com
- **Stephen L Jantzen**  
sjantzen@ryanwhaley.com loelke@ryanwhaley.com;mkeplinger@ryanwhaley.com
- **John F Jeske**  
jjeske@faegre.com qsperrazza@faegre.com;dboehme@faegre.com

- **Jay Thomas Jorgensen**  
jjorgensen@sidley.com noman@sidley.com;bmatsui@sidley.com
- **Raymond Thomas Lay**  
rtl@kiralaw.com dianna@kiralaw.com;niccilay@cox.net
- **Nicole Marie Longwell**  
Nlongwell@jpm-law.com ahubler@jpm-law.com
- **Archer Scott McDaniel**  
Smcdaniel@jpm-law.com jwaller@jpm-law.com
- **James Randall Miller**  
rmiller@mkblaw.net smilata@mkblaw.net;clagrone@mkblaw.net
- **Robert Allen Nance**  
rnance@riggsabney.com jzielinski@riggsabney.com
- **George W Owens**  
gwo@owenslawfirm.com ka@owenslawfirm.com
- **David Phillip Page**  
dpag@mkblaw.net smilata@mkblaw.net
- **Robert Paul Redemann**  
rredemann@pmrlaw.net cataylor@pmrlaw.net;shopper@pmrlaw.net
- **Melvin David Riggs**  
driggs@riggsabney.com pmurta@riggsabney.com
- **Randall Eugene Rose**  
rer@owenslawfirm.com ka@owenslawfirm.com
- **Patrick Michael Ryan**  
pryan@ryanwhaley.com jmickle@ryanwhaley.com;kshocks@ryanwhaley.com
- **Robert E Sanders**  
rsanders@youngwilliams.com
- **David Charles Senger**  
dsenger@pmrlaw.net lthorne@pmrlaw.net;shopper@pmrlaw.net
- **Colin Hampton Tucker**  
chtucker@rhodesokla.com scottom@rhodesokla.com
- **John H Tucker**  
jtuckercourts@rhodesokla.com
- **Elizabeth C Ward**  
lward@motleyrice.com
- **Sharon K Weaver**  
sweaver@riggsabney.com ajohnson@riggsabney.com
- **Timothy K Webster**  
twebster@sidley.com jwedeking@sidley.com;ahorner@sidley.com
- **Terry Wayen West**  
terry@thewestlawfirm.com
- **Edwin Stephen Williams**  
steve.williams@youngwilliams.com
- **Douglas Allen Wilson**  
Doug\_Wilson@riggsabney.com pmurta@riggsabney.com
- **Lawrence W Zeringue**  
lzingue@pmrlaw.net cataylor@pmrlaw.net;shopper@pmrlaw.net

I hereby certify that on November 18, 2005, I served the foregoing document by U.S. Postal Service on the following, who are not registered participants of the ECF System:

**Delmar R Ehrich**

Faegre & Benson (Minneapolis)  
90 S 7TH ST STE 2200  
MINNEAPOLIS, MN 55402-3901

**James Martin Graves**

Bassett Law Firm  
P O Box 3618  
Fayetteville, AR 72702

**Thomas C Green**

Sidley Austin Brown & Wood LLP  
1501 K ST NW  
WASHINGTON, DC 20005

**William H Narwold**

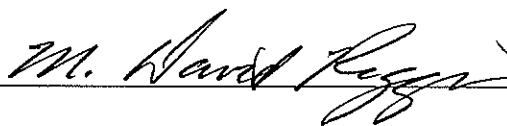
Motley Rice LLC (Hartford)  
20 CHURCH ST 17TH FLR  
HARTFORD, CT 06103

**C Miles Tolbert**

Secretary of the Environment  
State of Oklahoma  
3800 NORTH CLASSEN  
OKLAHOMA CITY, OK 73118

**Gary V Weeks**

Bassett Law Firm  
P O Box 3618  
Fayetteville, AR 72702

  
\_\_\_\_\_